IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 119 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO LTD

Versus

MAGANLAL HIRABHAI PATEL

Appearance:

MR RR MARSHALL for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 28/07/97

ORAL JUDGEMENT

1. The United India Insurance Co.Ltd has preferred this CRA under section 115 of C.P.Code challenging the order passed below Exh.12 by the MACT(Main) at Junagadh in Civil Misc.Application No.452/92 wherein in the vehicular accident that took place the claimant received injuries and applied for payment of amount due and payable under the principle of "no fault liability", i.e.

Section 140 of the Motor Vehicles Act, 1988. The accident in question has taken place on 16.12.1989 and admittedly the accident was vehicular accident which has taken place around 3.00 pm at a distance of 2 KMs from Keshod Police Station which is near the ST bus-stand of village Chansari of Dist.Junagadh. The vehicle involved in the accident is a motorcycle bearing Reg.No.GCA 627 and at the relevant time opponent No.1 was driving the motorcycle rashly and negligently and opponent No.2 is the owner of the motorcycle and opponent No.3 is the Insurance Co. It is the case of the injured person that on the date of accident he was standing on the busstand of village Motighansari and he was waiting for ST bus and at that time the opponent No.1 came there driving the motorcycle. It is the case of the claimant that due to rash and negligent driving of the vehicle he dashed his motorcycle with the claimant as a result of which the claimant sustained fracture and other injury in the right leg and he was required to be admitted in the hospital where he was given treatment by the medical officer at Keshod and thereafter he was removed to the hospital of Dr.Makadia of Junagadh. Various documents in support of injuries received were produced by the claimant and based on "no fault liability" with primary object to see that the injured person can receive medical treatment, the claims tribunal by judgment and award, dated 11.1.1993 awarded amount of Rs.12,000/- and ordered that the amount of deficit court fee shall be first realised from the amount to be paid.

2. The Insurance Company felt aggrieved thereby and is before this court.

3. Mr.R.R.Marshall appearing for the Insurance Co has very vehemently submitted before this court that the application under section 140 based on "no fault liability" was liable to be rejected because the Act of 1988 was not applicable to Section 140, and secondly because the main application for compensation which was filed under section 166(3) of the Motor Vehicle Act was dismissed on the ground that it was filed beyond the prescribed period of limitation. It is true that initially prior to the amendment of Mortor Vehicle Act, 1988 an application for compensation in case of accident was required to be filed within period of six months from the date of occurrence of accident and under the proviso the claim tribunal may entertain such application after such period of six months but not later than 12 months, if it is satisfied that the applicant was prevented by sufficient cause from making application in time. Submission of Mr.Marshall is that the MACP No.149/90 was

already dismissed under section 166(3) as it stood prior to this amendment as it was barred by limitation, and therefore, no application based on "no fault liability" could be filed under section 140 of the said Act. As usual, in the very sketchy memo of CRA Mr.Marshall has nowhere pointed out as to when the MACP was filed by the injured came to be rejected on the ground of limitation, but the fact remains that the accident has taken place on 16.12.1989 and the amendment in Section 166 is already made in the year 1988. If the accident has taken place in the year 1989 and the amendment of law has taken place in the year 1988 to contend before the Court that the main petition was dismissed on the ground of limitation is to mislead the court and to argue that the new amendment of the year 1988 will not apply mis not appreciable. If the petition was filed on 12.8.92 and the vehicular accident has taken place on 16.12.1989, both dates are subsequent to the amendment in the law in the year 1988 and in that view of the matter petition could not have been dismissed by the tribunal on the ground of limitation and even if it has done so it is again without jurisdiction. When the petition was filed in the year 1992 the amended Act applied and this court has also taken the view in the case of MUNSHIRAM D.ANAND vs PRAVINSINH PRABHATSINH ANAND SOCIETY, NAVAGAM GEDH, JAMNAGAR reported in AIR 1997 Gujarat 60 which is as under:

"Mere perusal of the said section makes it abundantly clear that where any permanent disablement is caused to a person from vehicular accident, the owner of the vehicle shall be liable to pay compensation in respect of such disablement in accordance with the provisions of the said section. Subsection (2) thereof provides that compensation payable for the permanent disablement to any person shall be a fixed sum of Rs.25,000/- which amount is enhanced and amended by Act 54 of 1994, which has come into force from 14th November, 1994. Prior thereto, said amount was limited to Rs.12,000/-. Since the judgment and interim award passed by the tribunal is prior to November 14, 1994, the tribunal has awarded the interim compensation at the rate of Rs.12,000/- as the opponent injured person has received permanent disability to the extent of 50% as stated and asserted by him before the Tribunal. It is pertinent to note that section 140 nowhere prescribes the period of limitation within which an application for interim compensation can be made. It also does

not provide that for filing an application or a petition for interim compensation, one must always file a petition for compensation under section 166. In other words, lodging of a petition for compensation under section 166 is not a condition precedent to filing of a petition for interim compensation on the principle of 'no fault liability'. However, Mr.Phave, very strenuously urged before the court that if ultimately no petition for compensation is filed under section 166, it would amount to giving wide spectrum to Section 144 of the Act person would simply file an application for interim compensation and may not file the substantial petition for compensation. In the alternative, he submitted that when the substantial petition for compensation itself is dismissed on the ground that it is beyond the prescribed period of limitation, an application for interim compensation under section 140 could not be entertained by the tribunal. ordinarily the situation as put before this Court in the first part of submission of Mr.Phave may not arise because in case of death, the heirs and legal representatives of the deceased or in case of injury, the person injured would ordinarily prefer to file a petition for compensation. One would always prefer to receive entire compensation receivable under section 166 of the said Act and one would not be content with receiving only interim compensation under no fault liability. In the present case also, the opponent injured person did file a petition for compensation under section 166 of the said Act but since same was barred by limitation under section 166(3) (as it stood prior to its amendment in 1994) unfortunately, the petition came to be dismissed by the tribunal on the ground that it was barred by limitation. Hoover, the tribunal was conscious of the fact that application for interim maintenance under section 140 is altogether an independent application which confers a right on the claimant to receive interim compensation irrespective of establishment of negligence or otherwise or irrespective of establishment of any liability. Concept of an absolute liability is introduced by this section as no fault is required to be proved and once the factum of vehicular accident is established coupled with the involvement of the vehicle and the ownership of the vehicle the

tribunal can always pass an order under section 140 for interim compensation. The intent of the Legislature in enacting such a provision was to see that the injured person or the heirs and legal representatives of the deceased person are not rendered to helpless or destitute situation of even not receiving any medical aid or treatment in absence of the finances. The Legislature, in fact, intended that for immediate medical and as well as for enabling the heirs and legal representatives of the deceased to meet with certain expenses including expenses for filing petition, some amount by way of interim compensation should be awarded by the owner of the vehicle irrespective of establishment of liability. Keeping the aforesaid broad intention of the Legislature in mind coupled with the absence of any provision prescribing limitation for interim maintenance in Section 140, the second part of submission of Mr.Phave is required to be examined. In my opinion, to control or limit operation of section 140 to those cases where a substantive petition under section 166 of the said Act of 1988 is filed and is pending, would tantamount to giving a very limited scope to a beneficial piece of legislation which is enacted for the class of claimants, either heirs or legal representatives of the deceased or injured persons in vehicular accident. The Legislature has advisedly therefore nowhere stated in section 140 that application for interim compensation can be made only if a substantive petition under section 166 is filed. Secondly, the Legislature has also nowhere prescribed the period limitation within which the application for interim compensation can be made under section 140 of the said Act. Therefore, accepting the submission of Mr.N.K.Phave, learned counsel appearing for the appellant would in substance amount to reading something more in section 140 than what the legislature has enacted. It would amount to prescribing the period of limitation for filing such application when the Legislature has not thought fit to prescribe any period of limitation. Secondly, it would also amount to introducing one another requirement of pendency of a substantive petition under section 166 for compensation which is also not the situation stipulated by section 140. Thirdly, to introduce such a condition in section 140 would in fact frustrate the object of the

Legislature of providing interim maintenance at the earlier possible opportunity. The injured person or the legal representative can move the tribunal for interim compensation within a week even before filing a petition under section 166 of the Act and the tribunal is bound, if requirements of section 140 are satisfied, to award the interim compensation. Keeping the aforesaid factors in mind, in my opinion, the submission of Mr.N.K.Phave, though appears to be attractive at the first blush, can not stand the judicial scrutiny of this court and shall have to be rejected. In fairness to the learned counsel, it must be stated that he has taken his court to the various provisions of Chapter X of the said act and section 144 clinches the issue in favour of the claimant and against the owner, not leaving any doubt in the mind of this court about the interpretation placed by this court on section 140 of the said Act. Section 144 reads as under:

144 Overriding effect:--The provisions of this Chapter shall have effect notwithstanding anything contained in anyother provision of this Act or anyother law for the time being in force.

From the aforesaid provision it becomes clear that the provisions of Chapter X are intended to have the overriding effect notwithstanding anything contained in annyother provision of this Act or of anyother law for the time being in force. Therefore, Chapter XII which deals with the Claims Tribunal and Section 166 which finds it place in Chapter XII can not have overriding effect over section 140 in light of the aforesaid clear statutory provision enacted by section 144 of the said Act. The Legislature has in no uncertain terms made its intention clear by providing that provisions of Chapter X shall have overriding effect and irrespective of any liability, if requirements of section 140 are satisfied, the tribunal can pass an award for interim compensation in favour of the claimant. In view of the aforesaid situation emerging from the reading of section 140 and 144 of the said Act, this court can not accept any of the aforesaid two submissions made by the learned counsel for the appellant"

4. The aforesaid judgment of this court completely

answers the submission of Mr.Marshal In view of the aforesaid filing of petition under section 166 for compensation is not a condition precedent for making an application under section 140 based on "no fault liability". One fails to understand as to how the dismissal of a petition for compensation under section 166 of the Act on the ground of limitation only can stop operation of section 140 which is based on "no fault liability". Submission of Mr.Marshall has therefore no substance. In my opinion, it is even otherwise answered in favour of claimant by this court. Order passed by the tribunal is therefore required to be upheld and is upheld. Rule is made absolute accordingly. Interim relief granted stands vacated. No costs.

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